§ 4a.5 Duration of classification.

(a) Information shall remain classified no longer than ten years from the date of its original classification, except as provided in §1.6(d) of E.O. 12958. Under E.O. 12958, information may be exempted from declassification within ten years if the unauthorized disclosure of such information could reasonably be expected to cause damage to the national security for more than ten years and meets one of the eight criteria listed in §1.6 (d).

(b) Department of Commerce originally classified information marked for an indefinite duration of classification under predecessor orders to E.O. 12958 shall be declassified after twenty years. Classified information contained in archive records determined to have permanent historical value under Title 44 of the United States Code shall be automatically declassified no longer than 25 years from the date of its original classification, except as provided in §3.4(d) of E.O. 12958.

§ 4a.6 General.

National security information over which the Department exercises final classification jurisdiction shall be declassified or downgraded as soon as national security considerations permit. If information is declassified, it may continue to be exempt from public disclosure by the Freedom of Information Act (5 U.S.C. 552) or other applicable law.

§ 4a.7 Mandatory review for declassification.

(a) *Requests.* Classified information under the jurisdiction of the Department is subject to review for declassification upon receipt of a written request that describes the information with sufficient specificity to locate it with a reasonable amount of effort. Requests must be submitted to the Deputy Assistant Secretary for Security, U.S. Department of Commerce, Room 1069, 14th and Constitution Avenue, NW., Washington, DC 20230.

(b) *Exemptions.* The following are exempt from mandatory review for declassification:

(1) Information that has been reviewed for declassification within the past two years;

(2) Information that is the subject of pending litigation;

(3) Information originated by the incumbent President, the incumbent President's White House Staff, committees, commissions, or boards appointed by the incumbent President, or other entities within the Executive Office of the President that solely advise and assist the incumbent President; and

(4) Information specifically exempt from such review by law.

(c) *Processing requirements.* (1) The DAS shall acknowledge receipt of the request directly to the requester. If a request does not adequately describe the information sought in accordance with paragraph (a) of this section, the requester shall be notified that unless additional information is provided, no further action will be taken. The request shall be forwarded to the component that originated the information or that has primary interest in the subject matter. The component assigned action shall review the information in accordance with §4a.7(c)(2) through (4) within twenty working days.

(2) The component assigned action shall determine whether, under the declassification provisions of the U.S. Department of Commerce Security Manual, the entire document or portions thereof may be declassified. Declassification of the information shall be accomplished by a designated declassification authority. Upon declassification the information shall be remarked. If the information is not partially or entirely declassified, the reviewing official shall provide the reasons for denial by citing the applicable provisions of E.O. 12958. If the classification is a derivative decision based on classified source material of another Federal agency, the component shall provide the information to the originator for review.

(3) If information is declassified, the component shall also determine whether it is releasable under the Freedom of Information Act. If the information is not releasable, the component shall advise the DAS that the information has been declassified but that it is exempt from disclosure, citing the appropriate exemption of the Freedom of Information Act.

(4) If the request for declassification is denied in whole or in part, the requester shall be notified of the right to appeal the determination within sixty calendar days and of the procedures for such an appeal. If declassified information remains exempt from disclosure under the Freedom of Information Act, the requester shall be advised of the appellate procedures under that law.

(d) *Fees.* If the request requires services for which fees are chargeable, the component assigned action shall calculate the anticipated fees to be charged, and may be required to ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action on the request, in accordance with § 4.11 of the Department of Commerce Freedom of Information Act rules and § 4.31 of the Department's Privacy Act rules.

(e) *Right of appeal.* (1) A requester may appeal to the DAS when information requested under this section is not completely declassified and released after expiration of the applicable time limits. Within thirty working days (i.e., excluding Saturdays, Sundays, and legal public holidays) of receipt of a written appeal:

(i) The DAS shall determine whether continued classification of the requested information is required in whole or in part;

(ii) If information is declassified, determine whether it is releasable under the Freedom of Information Act; and

(iii) Notify the requester of his or her determination, making available any information determined to be releasable. If continued classification is required under the provisions of the Department of Commerce National Security Manual, the DAS shall notify the requester of his or her determination, including the reasons for denial based on applicable provisions of E.O. 12958, and of the right of final appeal to the Interagency Security Classification Appeals Panel.

(2) During the declassification review of information under appeal the DAS may overrule previous determinations in whole or in part if continued protection in the interest of national security is no longer required. If the DAS determines that the information no longer requires classification, it shall be declassified and, unless it is otherwise exempt from disclosure under the Freedom of Information Act, released to the requester. The DAS shall advise the original reviewing component of his or her decision.

§ 4a.8 Access to classified information by individuals outside the Government.

(a) *Industrial, Educational, and Commercial Entities.* Certain bidders, contractors, grantees, educational, scientific, or industrial organizations may receive classified information under the procedures prescribed by the National Industrial Security Program Operating Manual.

(b) *Access by historical researchers and former Presidential appointees.* An individual engaged in historical research projects or who has previously occupied a policy-making position to which he or she was appointed by the President may be authorized access to classified information for a limited period, provided that the head of the component with jurisdiction over the information:

(1) Determines in writing that:

(i) Access is consistent with national security;

(ii) The individual has a compelling need for access; and

(iii) The Department's best interest is served by providing access;

(2) Obtains in writing from the individual:

(i) Consent to a review by the Department of any resultant notes and manuscripts for the purpose of determining that no classified information is contained in them; and

(ii) Agreement to safeguard classified information in accordance with applicable requirements; and

(iii) A detailed description of the individual's research;

(3) Ensures that custody of classified information is maintained at a Department facility;

(4) Limits access granted to former Presidential appointees to items that the individual originated, reviewed, signed, or received while serving as a Presidential appointee; and

(5) Receives from the DAS:

(i) A determination that the individual is trustworthy; and